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SOAH DOCKET NO. 473-21-0538
PUC DOCKET NO. 51415

APPLICATION OF SOUTHWESTERN	§	BEFORE THE STATE OFFICE
ELECTRIC POWER COMPANY FOR	§	
AUTHORITY TO CHANGE RATES	§	OF
	§	
	§	ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 2
MEMORIALIZING PREHEARING CONFERENCE; APPROVING AMENDED
NOTICE, INTERVENTION DEADLINE, AND SUFFICIENCY OF APPLICATION;
GRANTING MOTIONS TO INTERVENE; ADOPTING PROCEDURAL SCHEDULE,
SETTING DATE FOR HEARING ON THE MERITS, AND SETTING AGREED
EFFECTIVE DATE; DENYING MOTION TO COMPEL

On November 13, 2020, the Administrative Law Judges (ALJs) convened an initial prehearing conference in this docket. This order memorializes actions ordered at the prehearing conference and addresses additional matters.

I. APPROVING AMENDED NOTICE, INTERVENTION DEADLINE, AND
ADDRESSING SUFFICIENCY OF SWEPCO'S APPLICATION

Southwestern Electric Power Company (SWEPCO) filed its application in Public Utility Commission of Texas (Commission) Docket No. 51415 on October 14, 2020 (Application). On November 9, 2020, SWEPCO filed an Amended Proposed Notice and, on November 10, 2020, Commission Staff recommended that the Amended Proposed Notice be deemed sufficient. As ordered at the prehearing conference, the Amended Proposed Notice is **APPROVED**. As noted in the procedural schedule adopted below, **the intervention deadline is February 10, 2021**.

No party filed a motion alleging material deficiencies in SWEPCO's Application by November 4, 2020. In accordance with 16 Texas Administrative Code § 22.75(c)(2), the Application was deemed sufficient as of November 18, 2020.

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II. GRANTING MOTIONS TO INTERVENE

Motions to intervene filed by Texas Industrial Energy Consumers and the Office of Public Utility Counsel were granted prior to the prehearing conference. At the prehearing conference, the following parties were granted intervenor status: Cities Advocating Reasonable Deregulation (CARD), Texas Cotton Ginners Association, and Walmart, Inc. On November 16, 2020, Eastman Chemical Company filed a motion to intervene and no party filed a response in opposition to that motion within five working days. Eastman Chemical Company's motion to intervene is **GRANTED**.

III. ADOPTING PROCEDURAL SCHEDULE, SETTING DATE FOR HEARING ON THE MERITS, AND SETTING AGREED EFFECTIVE DATE

On November 19, 2020, SWEPCO filed an Agreed Motion to Adopt Procedural Schedule (Agreed Motion). With one addition requiring that a settlement status report be filed on May 5, 2021, the ALJs **APPROVE AND ADOPT** the following procedural schedule and filing requirements proposed by the parties:

Event	Date
Filing date	October 14, 2020
45-day case update ¹	November 30, 2020
Intervention deadline	February 10, 2021
Objections to SWEPCO's Direct Testimony	February 12, 2021
Replies to Objections to SWEPCO's Direct Testimony	February 22, 2021
SWEPCO and CARD to File Supplemental Rate-Case Expense Reports ²	April 8, 2021
Deadline for Filing Written Discovery on SWEPCO's Direct Testimony	March 10, 2021
Relate-Back date under PURA § 36.211	March 18, 2021
Intervenor Direct Testimony	March 31, 2021
Staff Direct Testimony	April 7, 2021
Deadline for Filing Written Discovery on Intervenor and Staff Direct	April 16, 2021

¹ Forty-five days after the filing date is November 28, 2020, which is a weekend day. The deadline rolls to the next Monday in accordance with 16 Tex. Admin. Code § 22.4(a).

² This deadline does not affect SWEPCO or CARD's ongoing duty to supplement discovery responses relating to rate-case expenses.

Testimony	
SWEPCO Rebuttal Testimony & Intervenor/Staff Cross-rebuttal	April 23, 2021
Status Report on Potential for Settlement ³	May 5, 2021
Deadline for taking depositions	May 12, 2021
Deadline for Filing Written Discovery on SWEPCO Rebuttal Testimony & Intervenor/Staff Cross-rebuttal	May 12, 2021
Hearing on the Merits	May 19-28, 2021
Initial Briefs	June 17, 2021
Reply Briefs & Proposed Findings of Fact and Conclusions of Law	July 1, 2021
Target Proposal for Decision Date (60 days after Reply Briefs)	August 30, 2021
Final Order Deadline	October 27, 2021

The hearing on the merits will convene in this docket at 9 a.m. on May 19, 2021, and continue as necessary through May 28, 2021. An order describing whether the hearing on the merits will be conducted in-person or via videoconference will be issued at a future date.

SWEPCO states in the Agreed Motion that it has agreed that the deadline for final Commission action on the rate request is October 27, 2021. The effective date set in Commission Order No. 1 is thereby extended to **October 27, 2021**.

Additionally, as proposed by the parties, the ALJs **ADOPT** the following procedures:

1. Drafts of testimony and emails that include drafts of testimony as attachments are not discoverable.
2. Email service is a valid method of service.
 - a. Email service on SWEPCO shall be made on Stacy Bankston-Pankratz at slbankston@aep.com and aepaustintx@aep.com.
3. Any party serving a document electronically must include the Commission docket number and a description of the document(s) in the subject line of the email transmitting the document.
4. Requests for Information (RFIs) received after 3:00 p.m. are deemed to have been received the following business day.
5. For written discovery on SWEPCO's Application and Direct Testimony:

³ SWEPCO, with agreement from the parties if possible, shall file a statement indicating the status of settlement discussions in this docket and specify whether the parties anticipate filing a motion to abate the procedural schedule to allow settlement discussions to continue.

- a. Responses to RFIs are due in accordance with the Commission's procedural rules;
 - b. Objections to RFIs on SWEPCO's Application and Direct Testimony that are not based on the assertion of privilege are due in accordance with the Commission's procedural rules;
 - c. Privilege-based objections to RFIs on SWEPCO's Application and Direct Testimony on the date responses to such RFIs are due, and privilege logs are due on the same day; and
 - d. Motions to compel, and responses to motions to compel are due in accordance with the Commission procedural rules.
6. For written discovery on Staff and Intervenor Direct Testimony and SWEPCO Rebuttal Testimony:
 - a. Responses to RFIs are due within four working days of receipt of the RFIs;
 - b. Objections to RFIs are due within four working days of receipt of the RFIs;
 - c. Motions to compel are due within three working days of receipt of the objection; and
 - d. Responses to motions to compel are due within three working days of receipt of the motion to compel.
7. For written discovery on Staff and Intervenor Cross-Rebuttal Testimony:
 - a. Responses to RFIs are due within five working days of receipt of the RFIs;
 - b. Objections to RFIs are due within five working days of receipt of the RFIs;
 - c. Motions to compel are due within four working days of receipt of the objection; and
 - d. Responses to motions to compel are due within four working days of receipt of the motion to compel.
8. Other than for SWEPCO's Direct Testimony, all objections and motions to strike any party's pre-filed direct, cross-rebuttal, and rebuttal testimony are due within seven working days of receipt of the testimony. Responses to all such objections and motions to strike are due within seven calendar days of receipt of the objections.
9. Workpapers to pre-filed Intervenor and Staff direct testimony, Intervenor and Staff cross-rebuttal testimony, and SWEPCO rebuttal testimony are due one working day after the filing of the testimony.
10. The days of November 23-27, 2020, and December 23, 2020 - January 1, 2021, will not be counted for any discovery-related deadlines. Any discovery served on those days will be considered received on November 30, 2020, or January 4, 2021, respectively.

IV. DENYING MOTION TO COMPEL

On November 9, 2020, CARD filed a motion to compel SWEPCO to respond to CARD's RFI 1-13. SWEPCO had objected to the RFI as seeking information that is irrelevant to the subject matter of the proceeding and outside the scope of permissible discovery.

CARD's RFI 1-13 states:

Identify planned environmental compliance projects for each SWEPCO generating plant, the specific regulations addressed by each project, and cost/benefit analyses supporting the selection of each compliance project.

CARD argued that its RFI seeks data within the scope of permissible discovery because it seeks information related to cost trends, which include costs on a going-forward basis with regard to SWEPCO's planned environmental-compliance projects. CARD contends that, due to the prospective nature of setting rates, the information it seeks may allow it to better ascertain whether the environmental-compliance expenses incurred during the Test Year are representative of reasonable environmental-compliance expenses going forward.


SWEPCO responded on November 17, 2020, stating that the purpose of this docket is to evaluate its proposed cost-of-service and prospective rates based on an historical test year, citing the Commission's cost-of-service rule: "only the electric utility's historical test year expenses as adjusted for known and measurable changes will be considered."⁴ SWEPCO states there are no planned environmental-compliance projects addressed in this case, such projects have not been placed in service, and such projects may not be undertaken in the future. SWEPCO contends that the existence of a plan for future environmental-compliance projects that may or may not be implemented does not serve as the basis for assessing a trend in historical expenses and investment. SWEPCO argues that discovery requests must be reasonably tailored to include only relevant matters, and states this standard should exclude potential cost items that may be included in future proceedings.

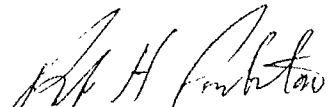
⁴ 16 Tex. Admin. Code § 25.231(b).

ALJs' Analysis

“The scope of discovery extends to any unprivileged information that is ‘relevant to the subject matter’ of the pending action, even if inadmissible at trial, so long as the information ‘appears reasonably calculated to lead to the discovery of admissible evidence.’”⁵ “Evidence is relevant if ‘(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.’”⁶ Thus, “[a]lthough the scope of discovery is broad, a request for information ‘must show a reasonable expectation of obtaining information that will aid the dispute’s resolution.’”⁷ As SWEPCO argues, CARD’s request seeks information beyond that which would be relevant under the Commission’s cost-of-service rule. Accordingly, the ALJs **DENY** CARD’s motion to compel.

SIGNED November 23, 2020.


STEVEN H. NEINAST
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS


ROBERT H. PEMBERTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

⁵ *In re Nat'l Lloyds Ins Co*, 532 S.W.3d 794, 808 (Tex. 2017) (quoting Tex. R. Civ. P. 192.3(a)).

⁶ *Id.* (quoting Tex. R. Evid. 401).

⁷ *Id.* (quoting *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding)); see also *In re Nat'l Lloyds Ins Co.*, 449 S.W.3d 486, 488 (Tex. 2014) (per curiam) (addressing related requirement that requests not be “overbroad,” *i.e.*, be “reasonably tailored to include only matters relevant to the case.”).